

RECORDING REQUESTED BY:
Ohlone Community College District
43600 Mission Boulevard
Fremont, California 94539

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief
Northern California – Coastal Cleanup
Operations Branch



2007125091

03/29/2007 03:22 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 0.00



17 PGS

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: County of Alameda, Assessor's Parcel No. 901-185-13-9
Ohlone Community College District Site (Project Code 201509-11))

This Covenant and Agreement ("Covenant") is made by and between the Ohlone Community College District (the "Covenantor"), the current owner of property situated in Newark, County of Alameda, State of California, described in Exhibit "A", and depicted on Exhibit "B" attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code section 25260. The Covenantor and Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471, and Health and Safety Code section 25355.5 that the use of the Property be restricted as set forth in this Covenant; and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 51 acres is more particularly described in Exhibit "A" and depicted within the crosshatched portions of the survey map attached hereto as Exhibit "B" and the shown as APN. 901-0185-013-9 of the Assessor's Parcel Map attached as Exhibit "B-1", each of which is incorporated herein by this reference. This Covenant does not extend to, and is specifically excluded from applying to, that certain parcel of contiguous property identified as Alameda County Assessor's Parcel No. 901-0185-13-8 comprising approximately 30 acres, as more particularly described in Exhibit "C" and depicted in Exhibit "D" attached hereto and incorporated herein by reference. The Property is located in the area now generally bounded by an Alameda County Flood Control and Water Conservation District drainage channel on the eastern and southeastern boundaries, Union Pacific Railroad tracks to the southwest, the George M. Silliman Recreation complex to the northwest, and the Newark Center for Health Sciences and Technology to the north and northeast in County of Alameda, State of California. The Property is also generally described as Alameda County Assessor's Parcel No. 901-0185-013-09.

1.02. Covenantor is remediating the Property under the supervision and authority of the Department. The Property is a 51-acre portion of an 81-acre Site remediated pursuant to a Removal Action Workplan developed under Health and Safety Code, division 20, chapter 6.8 under the oversight of the Department. The Removal Action Workplan requires recordation of an environmental restriction on the Property, because toxaphene and DDE, which are hazardous substances as defined in Health and Safety Code section 25316, and hazardous materials as defined in Health and Safety Code section 25260, remain at concentrations unsuitable for unrestricted use on the Property.

1.03. The Department circulated the Removal Action Workplan for public review and comment. The Removal Action Workplan was approved by the Department on June 9, 2005. The objective of the Removal Action Workplan was to cleanup the northern portion of the Site to unrestricted land use standards for development into the Ohlone Community College District's Newark Center for Health Sciences and Technology Campus. Soil containing toxaphene and DDE from the proposed northern College Campus portion of the

Site was relocated to a 25-acre consolidation area within the southern 51 acre portion of the Site. Although the relocated soil contained chlorinated pesticides above levels safe for residential use, the levels are similar to those found in the southern portion of the Site that will continue to be used for agricultural purposes. The Removal Action Workplan required recordation of an environmental restriction for the southern 51 acre portion of the Site to ensure that it is not used for sensitive land uses, such as residential use. Soil management on the southern 51 acre portion of the Site is pursuant to an Operation and Maintenance Plan incorporated into the Operation and Maintenance Agreement between the Ohlone Community College District and the Department dated March 28, 2007.

1.04. Toxaphene levels on the southern portion of the Site range from non-detect at <0.1 milligrams per kilogram (mg/kg) to 2.5 mg/kg. DDE levels on the southern portion of the Site range from non-detect at <0.05 mg/kg to 6.2 mg/kg. As a point of comparison, the California Environmental Protection Agency's residential California Human Health Screening Level (CHSSL) for toxaphene and DDE are 0.46 mg/kg and 1.6 mg/kg, respectively. Therefore, the Department concluded that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to agricultural, commercial or industrial uses.

1.05. DTSC determined that the cleanup actions proposed in the Removal Action Workplan were within the scope of and adequately described by an Environmental Impact Report and Addendum for the Newark Center for Health Sciences and Technology adopted by the Ohlone Community College District, the lead agency for the development project, on December 8, 2004 and March 30, 2005, respectively. Therefore, DTSC filed a Notice of Determination (NOD) to comply with the requirements of the California Environmental Quality Act with the Office of Planning and Research on June 9, 2005.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" includes, but is not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines, or other utilities.

2.04. Lease. "Lease" means lease, rental agreement, or any other document that creates a right to use or occupy any portion of the Property.

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.07. Property. "Property" means the real property described and depicted on Exhibits "A" and "B" and excludes the real property described in Exhibits "C" and depicted on Exhibit "D" attached hereto and incorporated by reference.

ARTICLE III
GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions, that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide written notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding Leases, and mortgages, liens, and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the Assessor's Parcel Number (APN) noted on page one. If the new owner's property has been assigned a different APN, each

such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

3.06. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for itself and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's cost in administering the Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities, other than normal agricultural activities, that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property. The Parties stipulate that normal agricultural activities include, but are not limited to, seasonal tilling, seeding and harvesting activities and routine irrigation and irrigation

repair activities.

- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property.

4.03. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.04. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233.

6.02 Termination or Modification. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Alameda within ten (10) days of the Covenantor's receipt of a fully executed original, in recordable form, from the Department.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used

herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

VP Business Services/Deputy Superintendent
Ohlone Community College District
43600 Mission Boulevard
Fremont, California 94539,

and

To Department:

Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Reporting Requirements. The Owner shall conduct an annual inspection and submit an Annual Inspection Report to the Department for its approval by January 15th of each year. The annual report, must include the dates, times, and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in

the annual report (e.g., drive by, fly over, walk in, etc.). If violations are noted, the annual report must detail the steps taken to return to compliance. If the Owner identifies any violations of this Covenant during the annual inspections or at any other time, the Owner must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of the Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Ohlone Community College District

By: Deanna Walston
Title: Deanna Walston
Vice President Business Services/
Deputy Superintendent

Date: 3/27/07

Department of Toxic Substances Control

By: Barbara J. Cook
Title: Barbara J. Cook, P.E., Branch Chief
Northern California Coastal Cleanup Operations Branch

Date: 3/29/2007

STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

On this 27th day of MARCH, in the year 2007,

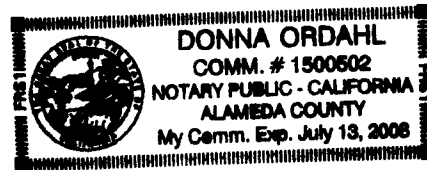
before me DONNA ORDAHL ^{NOTARY}
_{PUBLIC}, personally appeared

DEANNA WALSTON,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Donna Ordehl



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

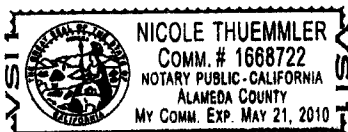
State of California

County of Alameda

On March 29, 2007 before me, Nicole Thuemmler Notary Public.
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Barbara J. Cook
Name(s) of Signer(s)

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nicole Thuemmler
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

Exhibit A
Legal Description

REAL PROPERTY IN THE CITY OF NEWARK, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SHOWN UPON PARCEL MAP 5647, FILED DECEMBER 19, 1989 IN BOOK 187, PAGES 85 AND 86 OF MAPS, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL 1 ON THE NORTHERLY LINE OF UNION PACIFIC RAILROAD (FORMERLY SOUTHERN PACIFIC) AS SHOWN ON SAID PARCEL MAP; THENCE FROM SAID POINT OF BEGINNING, NORTH 19°28'07" EAST 51.74 FEET ALONG THE WESTERLY LINE OF SAID PARCEL 1; THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT WITH A RADIAL BEARING OF SOUTH 31°54'03" WEST, A RADIUS OF 2976.34 FEET, THROUGH AN ANGLE OF 4°49'15"; A DISTANCE OF 250.43; THENCE NORTH 19°28'07" EAST 157.18; THENCE ALONG A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 335.00 FEET, THROUGH AN ANGLE OF 42°14'35", A DISTANCE OF 246.99 FEET; THENCE ALONG THE FOLLOWING COURSES AND DISTANCES:

NORTH 19°28'07" EAST 435.00 FEET;
NORTH 53°06'42" EAST 92.54 FEET;
NORTH 19°28'07" EAST 6.03 FEET;
SOUTH 66°17'01" EAST 894.93 FEET;

THENCE ALONG AN ARC OF A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 1020.00 FEET, THROUGH AN ANGLE OF 10°09'30", A DISTANCE OF 180.84 FEET;
THENCE ALONG THE FOLLOWING COURSES AND DISTANCES:

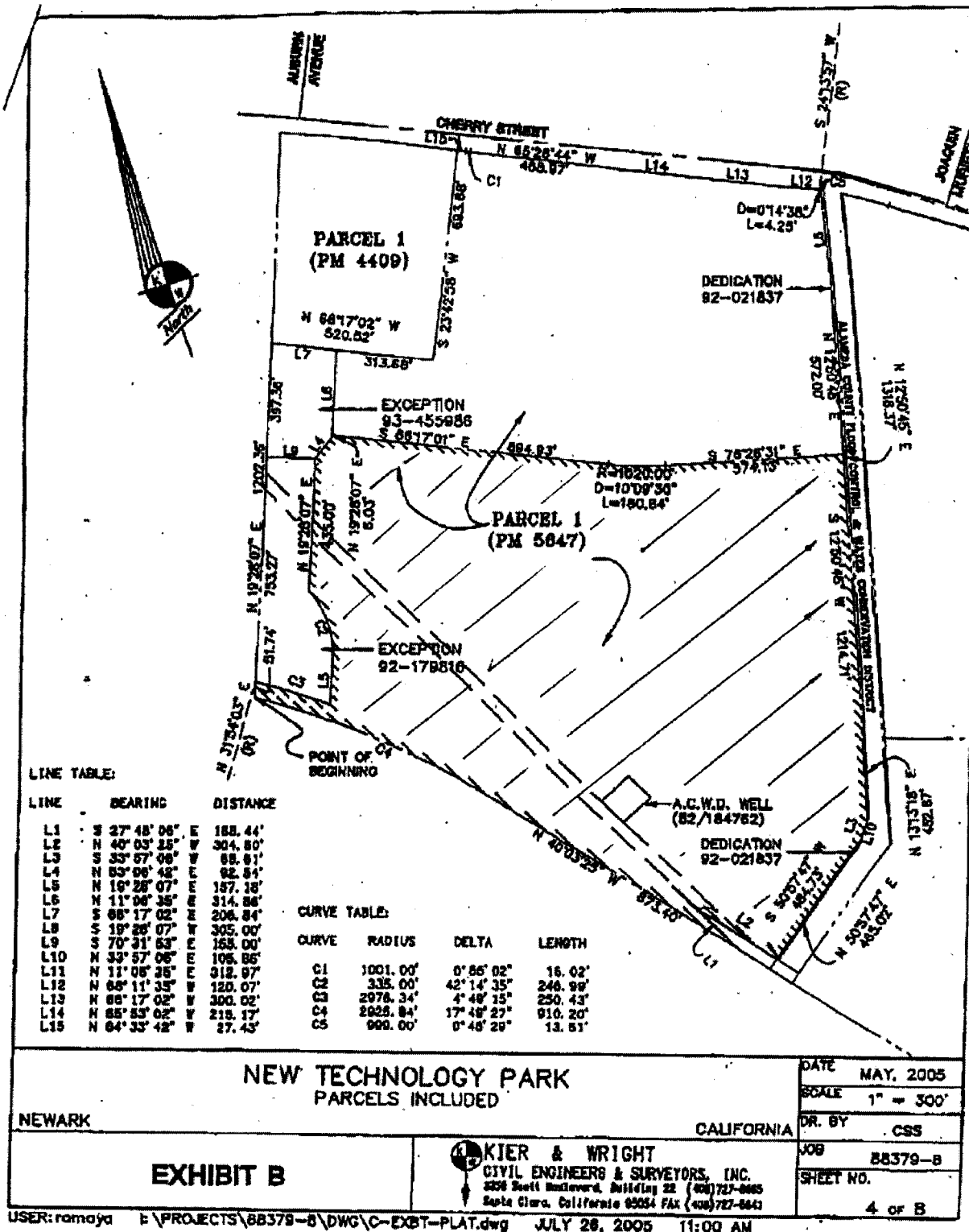
SOUTH 76°26'31" EAST 574.13 FEET;
SOUTH 12°50'45" WEST 1214.71 FEET;
SOUTH 33°57'06" WEST 68.61 FEET;
SOUTH 50°57'47" WEST 484.73 FEET;
NORTH 40°03'25" WEST 304.80 FEET;
SOUTH 27°48'06" EAST 188.44 FEET;

THENCE NORTH 40°03'25" WEST 873.40 FEET TO SAID NORTHERLY LINE OF UNION PACIFIC RAILROAD; THENCE CONTINUING ALONG SAID NORTHERLY LINE ALONG AN ARC OF A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 2925.84 FEET, THROUGH AN ANGLE OF 17°49'27", A DISTANCE OF 910.20 TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT CERTAIN WELL PARCEL CONVEYED TO THE ALAMEDA COUNTY WATER DISTRICT, RECORDED DECEMBER 8, 1982 DOCUMENT NO. 82-184762 ALAMEDA COUNTY RECORDS, SAID PARCEL CONTAINS 12,000 SQUARE FEET.

CONTAINING AN AREA OF 2,242, 654 SQUARE FEET OR 51 ACRES MORE OR LESS.

Exhibit B
Parcel Map



USER: ramoya E:\PROJECTS\88379-B\DWG\C-EXBT-PLAT.dwg JULY 26, 2005 11:00 AM

CLEAR COPY CAN BE FOUND AT
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
700 HEINZ AVENUE, SUITE 200
BERKELEY, CALIFORNIA 94710

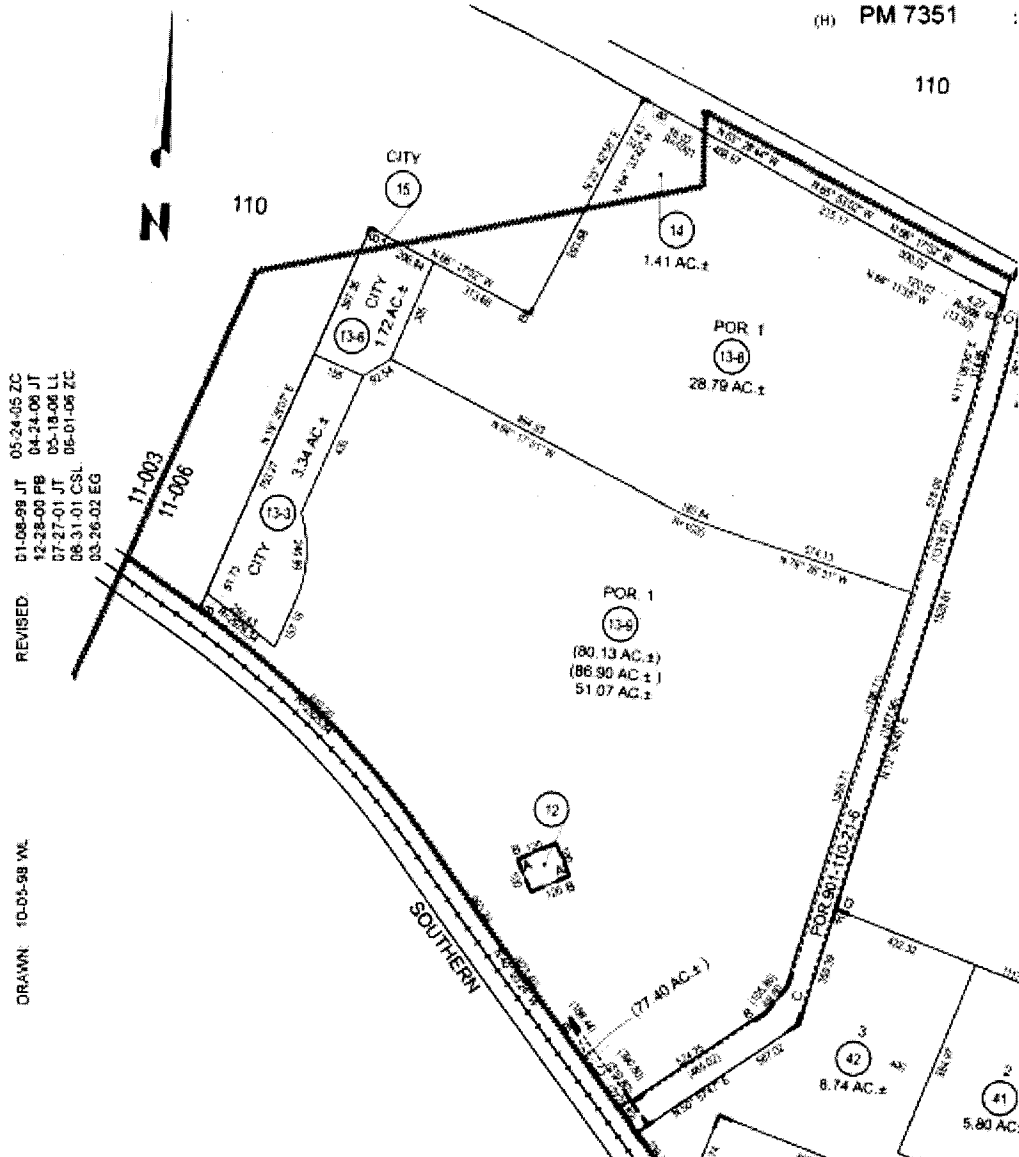
Exhibit B-1
Parcel Map

ASSESSOR'S MAP 901

185
SCALE 1" = 400'

Code Area Nos.

- (A) MOWRY RAIL
- (B) PM 5647
- (D) PM 7255
- (F) PM 7667
- (H) PM 7351



CLEAR COPY CAN BE FOUND AT
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
700 HEINZ AVENUE, SUITE 200
BERKELEY, CALIFORNIA 94710

Exhibit C
Property Description

REAL PROPERTY IN THE CITY OF NEWARK, COUNTY OF ALAMEDA, STATE OF CALIFORNIA,
DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 1, AS SHOWN UPON PARCEL MAP 5647, FILED DECEMBER
19, 1989 IN BOOK 187, PAGES 85 AND 86 OF MAPS, ALAMEDA COUNTY RECORDS, MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID PARCEL 1 ON THE SOUTHERLY LINE
OF CHERRY STREET AS SHOWN ON SAID PARCEL MAP; THENCE FROM SAID POINT OF
BEGINNING, SOUTH 64°33'42" EAST 27.43 FEET ALONG SAID SOUTHERLY LINE OF CHERRY
STREET; THENCE CONTINUING ALONG SAID SOUTHERLY LINE ALONG AN ARC OF A TANGENT
CURVE TO THE LEFT WITH A RADIUS OF 1001.00 FEET, THROUGH AN ANGLE OF 00°55'02", A
DISTANCE OF 16.02 FEET; THENCE CONTINUING ALONG SAID SOUTHERLY LINE THE
FOLLOWING COURSES AND DISTANCES:

SOUTH 65°28'44" EAST 488.97 FEET;
SOUTH 65°53'02" EAST 215.17 FEET;
SOUTH 66°17'02" EAST 300.02 FEET;
SOUTH 68°11'35" EAST 120.07 FEET;

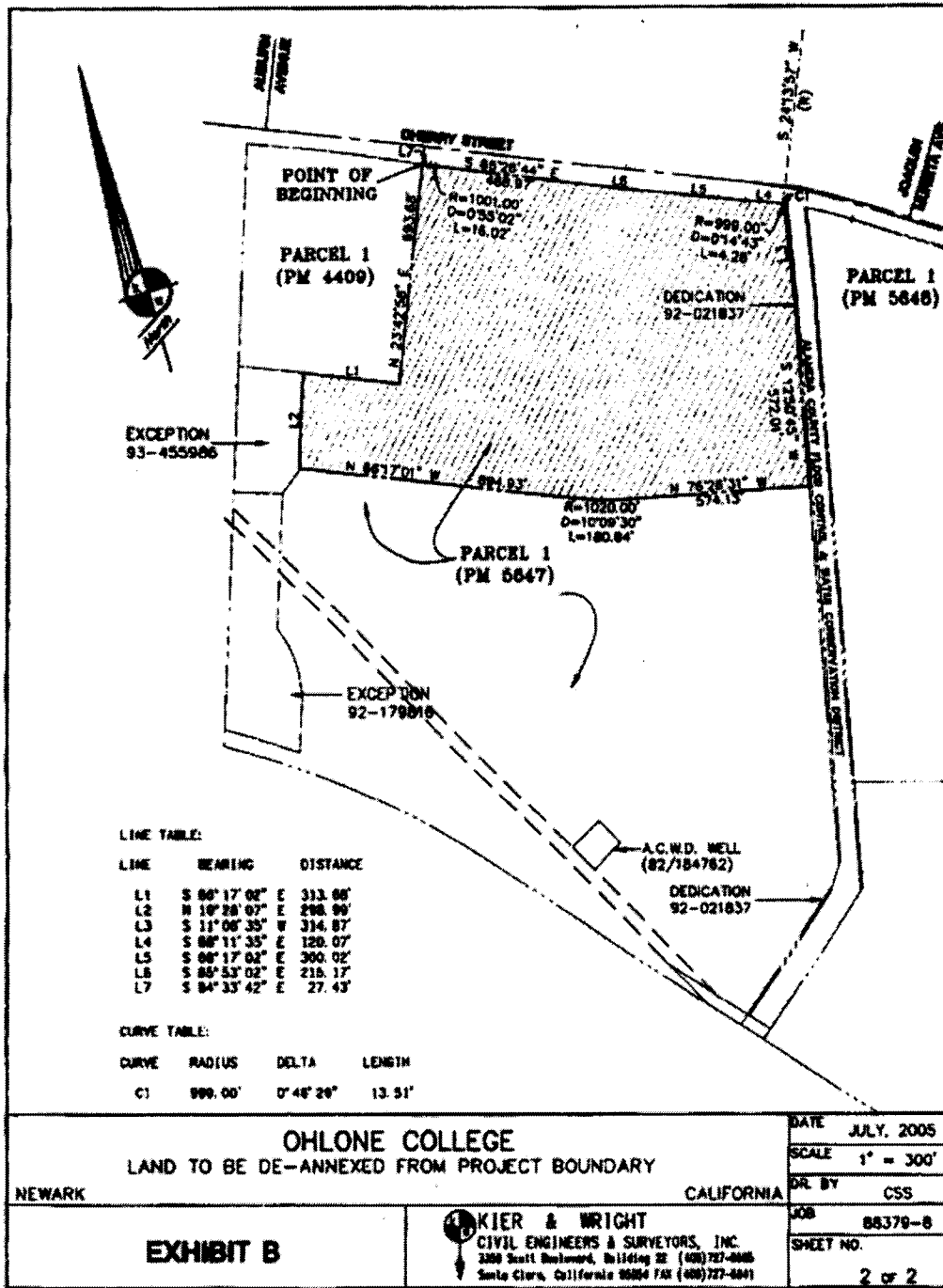
THENCE CONTINUING ALONG SAID SOUTHERLY LINE ALONG AN ARC OF A NON-TANGENT
CURVE TO THE LEFT, HAVING A RADIAL BEARING OF SOUTH 24°13'57" WEST, WITH A RADIUS
OF 999.00 FEET, THROUGH AN ANGLE OF 00°14'43", A DISTANCE OF 4.28 FEET; THENCE THE
FOLLOWING COURSES AND DISTANCES:

SOUTH 11°06'35" WEST 314.87 FEET;
SOUTH 12°50'45" WEST 572.01 FEET;
NORTH 76°26'31" WEST 574.13 FEET;

THENCE ALONG AN ARC OF A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1020.00
FEET, THROUGH AN ANGLE OF 10°09'30", A DISTANCE OF 180.84 FEET; THENCE NORTH
66°17'01" WEST 894.93 FEET; THENCE NORTH 19°28'07" EAST 298.99 FEET TO THE
SOUTHERLY LINE OF PARCEL 1 SHOWN ON PARCEL MAP 4409 RECORDED IN BOOK 149,
PAGE 64 OF MAPS, ALAMEDA COUNTY RECORDS; THENCE ALONG SAID SOUTHERLY LINE
SOUTH 66°17'02" EAST 313.68 FEET TO THE EASTERLY LINE OF SAID PARCEL 1; THENCE
ALONG SAID EASTERLY LINE NORTH 23°42'58" EAST 893.68 FEET TO THE POINT OF
BEGINNING

CONTAINING AN AREA OF 1,306,090 SQUARE FEET OR 30.0 ACRES MORE OR LESS

Exhibit D
Parcel Map



USER:ramayo I:\PROJECTS\88379-8\DWG\exhibit2.dwg JULY 19, 2005 1:55 PM

CLEAR COPY CAN BE FOUND AT:
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
700 HEINZ AVENUE, SUITE 200
BERKELEY, CALIFORNIA 94710